

REMARKS

The Office Action mailed January 16, 2004 has been reviewed and carefully considered. Claim 15 has been added. Claims 1-15 are now pending in the application. Of these, claims 1, 4 and 8 are the independent claims. Claims 1 and 2 have been amended. Reconsideration of the above-identified application, as amended and in view of the following remarks, is respectfully requested.

Item 3 of the Office Action requests that line numbers of the claims be reformatted. Due to practical considerations, the applicant cannot meet this request. The applicant notes that item 3 makes no requirement, nor does it appear to the applicant that authority for such a requirement exists.

Item 4 of the Office Action objects to Figures 1 and 2 for lack of a "PRIOR ART" legend. As the Office Action acknowledges, Figures 3 and 4 were submitted, inadvertently in error, in the previous reply with the "PRIOR ART" legend. The legend has now been added, as originally intended, to Figures 1 and 2. The new set of drawings reflecting this correction is included with this reply.

Claims 4-7 and 14 stand rejected under 35 U.S.C. 112, second paragraph as indefinite.

As to claim 4, item 5 of the Office Action identifies two phrases it suggests to be "murky or not clearly understood."

As to step (a), the transmitting step, item 5 questions as not "clearly understood" what is the source of the "transmitting?" Item 5 falls short of suggesting that the claim is incomplete, but implies discomfort at not being told explicitly from where

the transmitting occurs. The applicant regards this as an example of claiming broadly.

The cure for any discomfort felt by the Examiner regarding the practice of claiming

broadly is to find relevant prior art.

The examiner's focus during examination of claims for compliance with the requirement for definiteness of **35 U.S.C. 112**, second paragraph is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement. . .

In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim appraises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph >by providing clear warning to others as to what constitutes infringement of the patent<. See, e.g., *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). See also *In re Larsen*, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished) MPEP 2173.02.

Since the scope of claim 4 would be clear to the practitioner of ordinary skill in the art, any rejection under Section 112 for lack of clarity is invalid and cannot be maintained.

As to step (d), it recites “transmitting, by said NMS and to said first node, a . . .” Item 5 rejects the expression “and to” as “not clearly understood.”

Claim 4 recites:

. . . (a) transmitting a new program data and a first control signal to the first node, said first node being coupled to a network management system (NMS) located in the network remotely from the plural nodes;

(b) changing the program of said first node to said new program data under the control of said control signal;

(c) storing said new program data in a memory means of said first node;

(d) transmitting, by said NMS and to said first node, a command signal to transmit the stored new program data to the second node and transmitting a second control signal to said second node . . .”

Presumably, the Examiner understands the expression “transmitting, by said NMS, a . . .”

It is likewise presumed that the Examiner understands the expression “transmitting, to said first node, a . . .”

To express both concepts in one phrase, one might say “transmitting, by said NMS and to said first node, a . . .”

Even assuming that the Examiner has a better way of expressing this two-fold concept, MPEP 2173.02 cited above requires that the Examiner focus on determining whether the scope of the expression is clear. If the scope is clear, that should be sufficient. The applicant submits that the scope is clear.

As to claim 6, item 5 of the Office Action suggests that “it is not clearly understood” what relationship exists between “a command signal” as recited in step (g) and “a command signal” recited in step (d) of claim 4. As a preliminary matter, the applicant notes that, as explicitly provided in claims 4 and 6, “a command signal” as

recited in claim 6, step (g) is transmitted to said second node, whereas “a command signal” recited in claim 4, step (d) is transmitted to said first node. Once again, the Examiner falls short of suggesting that the either claim is incomplete. This is another example of claiming broadly. The scope of both claims is clear to those of ordinary skill in the art. Accordingly, the rejection under Section 112 is invalid and cannot be sustained. If the Examiner feels that either claim is too broad, the Examiner is invited to search for relevant prior art.

Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-11 stand rejected under 35 U.S.C. 103(a) as unpatentable over the alleged admissions of the applicant (AAA) in view of U.S. Patent No. 5,557,317 to Nishio et al. (“Nishio”).

As items 9, 10 and 13 of the Office Action acknowledge, AAA fails to disclose or suggest various limitations of claim 1. The AAA appears to consist of FIGs. 1 and 2 of the present application.

FIG. 1 of the instant specification (“PA FIG. 1”) relates to a ring configuration of nodes, one of the nodes being directly connected to a network management system (NMS). The NMS transmits update data individually to each node by means of its access to ring through the one node. The NMS controls the updating of each node and distributes the same update data throughout the system to all of the nodes.

Nishio is directed to a video data relocation system which includes a number of nodes and a video management center (VMC) that controls data relocation from one node to another. No video data or update data flows from the VMC; instead, such data flows strictly from node to node. Also, the nodes are not connected in a ring

configuration; they are instead connected in a two-way bus topology (FIG. 1, 36, 54, 100, 57). Moreover, Nishio does not proliferate a particular video program or update data throughout the nodes; instead, a particular Nishio node relocates its video program to another node and then erases (col. 7, line 3: "erased") its copy.

In determining the differences between the prior art and the claims, the question under **35 U.S.C. 103** is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983) MPEP 2141.02.

To reach a proper determination under **35 U.S.C. 103**, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. MPEP 2142. [underlining added for emphasis]

In view of the above-specified fundamental differences between Nishio and the applicant's allegedly admitted prior art (AAA), the fact that Nishio determines a closest node on the bus configuration having the particular program for relocating the program to a requesting node on the bus configuration would not have suggested to one of ordinary skill the art any modification to PA FIG. 1, except through impermissible hindsight gained from reading the present disclosure.

FIG. 2 of the present disclosure (“PA FIG. 2) discloses a system analogous to PA FIG. 1, but having a linear configuration rather than a ring configuration. Nishio likewise fails to suggest modification of the linear configuration of PA FIG. 2.

In addition and as item 9 of the Office Action acknowledges, the AAA fails to disclose or suggest “allocating a fixed region in a memory within said first predetermined node in response to the reception of the new program data” as explicitly required by the language of claim 1. Item 9 also implicitly acknowledges that Nishio fails to make up the difference, but suggests it would have been obvious “to include memory in each node for storing received data” to “improve” system integrity. This fails to explain, however, why the region is “fixed” and why the allocating occurs “in response to” the reception of the new program data.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). MPEP 2143.03.

In addition, the applicant notes that a main difference between the present invention and Nishio is the methodology of transferring a program-changing signal versus that of transferring a data-transmitting signal. Although items 11 and 14 of the Office Action suggest that Nishio teaches a program-changing signal and a data-transmitting signal, lines 51-57 of column 1 of Nishio disclose that a video program is transmitted responsive to a program transfer command signal, and that a control signal is adapted for establishing a connection between the subscriber terminal and the second video storage device. The latter two disclosures by Nishio differ from the signal flow of

the present invention (See, e.g., FIGs. 3 and 4 and the accompanying text in the specification.)

Referring to FIG. 3 of the present invention, upon transferring a program data and a program-changing signal to a Node connected to an NMS (10), the Node receiving the data stores the program data in a memory and changes the corresponding program by the program-changing signal. After that, the NMS (10) transfers a program-transferring signal to a Node which is completed to change a program, and transfers the program-changing signal to a node to be changed next. Then, the Node receiving the program-changing signal transfers the program data to the next node.

Nishio, by contrast, fails to disclose a construction of allowing the NMS to transmit a signal for indication of transmission of data from an update-completed node to the other node to be updated next in order to independently manage a system, to transfer a program-changing signal for changing a program to a node to be updated and to transfer a program data to a node to be updated next connected to the updated node. Nishio accordingly does not disclose a method of changing a new program with respect to all nodes constituting a network as in the present invention.

Since the applied prior art, alone or in combination, fails to meet the limitations of claim 1, claim 1 is rendered neither anticipated nor obvious. Support for the amendment of claims 1 and 2 is found in the FIGs. 3 and 4 and accompanying text in the specification.

Reconsideration and withdrawal of the rejection is respectfully requested.

As to claims 4 and 8, items 23 and 24 of the Office Action likewise acknowledge that the AAA fails to disclose or suggest various limitations of those claims.

Nishio fails to compensate for the shortcomings of AAA for the same respective reasons set forth above regarding claim 1. Reconsideration and withdrawal of the rejection is respectfully requested.

The other rejected claims each depend from one of the base claims and are deemed non-obvious for at least the same reasons as their respective base claims.

Claim 15 has been added to further emphasize aspects of what the applicant regards to the invention. Support for new claim 15 is found in FIGs. 3 and 4 and accompanying portions of the specification.

In view of the foregoing amendments and remarks, it is believed that this application is now in condition for allowance. The Examiner is invited to contact the undersigned in the event of any perceived outstanding issues so that passage of the case to issue can be effected without the need for a further Office Action.

In the event that any additional fee is required to continue the prosecution of this Application as requested, please charge such fee to Deposit Account No. 502-470.

Respectfully submitted,

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Date: 8/3/04

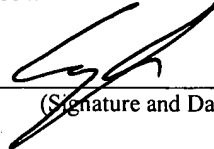
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